APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,308	01/30/2004	Richard Wayne Buskens	LUC-450/Buskens 6-1-1-1-2	6327

32205 7590 02/08/2007		EXAMINER
CARMEN B. PATTI & ASSOCIATES, LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO, IL 60602		WANG, RONGFA PHILIP

ART UNIT	PAPER NUMBER
2191	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	10/768,308	BUSKENS ET AL.
	Examiner	Art Unit	
	Philip Wang	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>30 January 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-21</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-21</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/22/2005</u>.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Detail Action

1.   This office action is in response to the application filed on 1/30/2004.

2.   Claims 1-21are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 1-15 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15 recite the limitation of an apparatus. Such apparatus may comprise a first manager component and a second manger according to claim limitation of claim 1. The first and second manager components can be interpreted as software and software is not considered a statutory subject matter. Current practice of the Office does not automatically consider a claim using the term apparatus as statutory unless the claim explicitly embodies statutory subject matters. Explicitly claiming, for example, memory or processor in the claim body can overcome this rejection.

Claim 21 recites an article, comprising one or more computer-readable signal-bearing media.

Current practice of the Office does not consider signal as a statutory subject matter. According

to the Applicant's specification, a computer-readable signal-bearing media can be a modulated

carrier signal (p. 10). Further an electrical data storage medium can be interpreted as signal

as signal is electrical. Also, page 2, line 16-17, "The article comprised one or more computer-

readable signal-bearing media.", further indicate such article is not a statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

4.   Claims 13, 14, 20, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the enablement requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to enable one skilled in the art to which it

pertains, or with which it is most nearly connected, to make and/or use the invention.

Per claim 13, it recites the limitation of the software and/or hardware entity is connected with the

first manager component to employ one or more of the one or more first management

operations and to prevent autonomous control of the software and/or hardware entity by the

high availability services software. Upon reviewing the Applicant's specification on page 7, for

example, it discloses

"…So, the software and/or hardware entity 102 may exist outside of the high
availability domain while still employing one or more functions of the high
availability services software. The software and/or hardware entity 102 may allow
connection with the management component 106 (e.g., the high availability services
software) and allow connection with the management component 104 to prevent autonomous
control of the software and/or hardware entity 102 by one of the management components
104 and 106, such as, the high availability services software. For example, the high
availability services software is able to peer with the management component 104 to
cooperatively manage the software and/or hardware entity 102 not under the exclusive
control of the high availability services software"

It appears the disclosure describes what the invention wants to do without providing detailed
information describing how the management component can prevent autonomous control   of
the software and/or hardware entity 102 by one of the management components 104 and 106,
such as, the high availability services software. For this reason, the instant claim is considered
lacking enablement requirement.

Per claim 14, it recites the limitation of "…in combination with the software and/or hardware
entity, wherein the first manager component, the second manager component, and the software
and/or hardware entity are responsible for one or more of setup and teardown of
telecommunication connections." Upon review the Applicant's disclosure on page 3, it appears
the disclosure states what the invention can do without giving any detail regarding how a
telecommunication connection can be setup and tear down. So, one skilled in the art at time of
invention would not be able to use the invention.

Per claim 20, similar to claim 13, the disclosure, for example, on page 7 merely states what the

invention can do without actually providing any detail and is considered lacking enablement

requirement.

Per claim 21, on page 10 of the Applicant's specification, the one or more computer-readable

signal-bearing media could include biological, and atomic data storage medium. It is not clear,

according to the specification, how a personal with ordinary skill in the art at the time of

invention could be able to use an electrical, biological, and atomic data storage medium. To

overcome this rejection, the Applicant must show what electrical, biological and atomic data

storage medium were used in the instant invention. Showing of products used will be sufficient

to overcome this rejection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

5.   Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

Claim 12 recites the limitation "the one or more second management operations

of the high availability services software" in " employ one or more of the one or more

second management operations of the high availability services software" . There is

insufficient antecedent basis for this limitation in the claim. According to the claim

language of claim 1, "the one or more second management operations" operates on

"the software and/or hardware entity". Not sure how these operations are now part of

the high availability services software.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Baughman (US Patent No. 6,408, 399).

As per claim 1,

-      a first manager component that performs one or more first management

    operations on a software and/or hardware entity; and a second manager

    component that performs one or more second management operations on the

    software and/or hardware entity (c4: 45-65, FIG. 3, "...a disk manage

    107 and 117 resides on each computer 10 and 11 to manage

    file manipulation of the shared disks 12 and 13...").

As per claim 16,

- configuring a software and/or hardware entity for partial control by a first

manager component and partial control by a second manager component (c4:

45-65, FIG. 3, "…a disk manage 107 and 117 resides on each

computer 10 and 11 to manage file manipulation of the

shared disks 12 and 13…")..

As per claim 21,

- one or more computer-readable signal-bearing media; and means in the one or

more media for configuring a software and/or hardware entity for partial control

by a first manager component and partial control by a second manager

component (c4: 45-65, FIG. 3, "…a disk manage 107 and 117

resides on each computer 10 and 11 to manage file

manipulation of the shared disks 12 and 13…").

7.   Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Anderson (USPGPub. No. 2003/0058796).

As per claim 1, Anderson discloses

- a first manager component that performs one or more first management

operations on a software and/or hardware entity; and a second manager

component that performs one or more second management operations on the

software and/or hardware entity ([0018], for example, line 12-15,

"…a traffic manager, a provisioning manager and a signaling

manager perform all broadband and narrowband...and

connections for all network devices." In this scenario,

the first manager component can be a traffic

manager/signaling manager; and the second manager component

can be a provisioning manager; and the software and/or

hardware entity is the network devices. See also, FIG. 2).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component and the second manager component are
  communicatively coupled ([0019], for example, "The signaling
  manager receives its working instructions from the traffic
  manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

- the first manager component and the second manager component coordinate the
  one or more first and second management operations to occur in a proper
  sequence ([0019], for example, "The signaling manager
  receives its working instructions from the traffic manage

and from the provisioning manager..."; [0033], "...decide how

to configure the logical networks on top of the physical

.network resources...").

As per claim 4,

the rejection of claim 1 is incorporated;

further Anderson discloses

- upon detection by the first management component of an event associated with

    the software and/or hardware entity, the first manager component sends a

    notification to the second manager component; wherein upon detection by the

    second management component of an event associated with the software and/or

    hardware entity, the second manager component sends a notification to the first

    manager component ([0021], shows monitoring of network

    event, [0018], [0019], show manager components communicating

    with each other.).

As per claim 5,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or

    hardware components; wherein the first manager component starts up the

    software and/or hardware entity and the one or more software and/or hardware

    components; wherein the first manager component sends a notification to the

second manager component to indicate that the software and/or hardware entity

and the one or more software and/or hardware components have been started

([0020], for example, "provisioning element for non-real

time circuits…performs…end point connections and port

provisioning…"; [0018]-[0019]).

As per claim 6,

the rejection of claim 5 is incorporated;

further Anderson discloses

- the second manager component initializes one or more of the one or more

    software and/or hardware components; wherein the second manager

    component sends a notification to the first manager component to indicate that

    the one or more of the one or more software and/or hardware components have

    been initialized ([0020], for example, "provisioning element for

    non-real time circuits…performs…end point connections and

    port provisioning…"; [0018]-[0019]).

As per claim 7,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or

    hardware components; wherein the first and second manager components

cooperate to initialize, monitor, and detect one or more failures of the software

and/or hardware entity and one or more of the one or more software and/or

hardware components ([0021]).

As per claim 8,

the rejection of claim 7 is incorporated;

further Anderson discloses

- the first and second manager components cooperate to recover the software

    and/or hardware entity from the one or more failures ([0068], "...restored

    quickly in the event hardware failure...").

As per claim 9,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component sends a request to the second manager component

    to cause the second manager component to perform a management operation of

    the one or more second management operations on the software and/or

    hardware entity ([0019]).

As per claim 10,

the rejection of claim 1 is incorporated;

further Anderson discloses

- one or more of the first and second manager components comprise high

  availability services software ([0068], line 2, "...high

  availability...").

As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the second

  manager component comprises high availability services software operating in a

  high availability domain; wherein the software and/or hardware entity operates

  outside of the high availability domain, wherein the software and/or hardware

  entity interacts with the high availability domain ([0068], line 2, "...high

  availability...").

As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain

  to employ one or more of the one or more second management operations of the

  high availability services software ([0068], line 2, "...high

  availability...").

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "...high availability...").

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections ([0060], "...creating...and tearing down connections...").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more first software and/or

    hardware components and one or more second software and/or hardware

    components; wherein the first manager component controls the one or more first

    software and/or hardware components; wherein the second manager component

    controls the one or more second software and/or hardware components

    ([0018], for example, line 12-15, "…a traffic manager, a

    provisioning manager and a signaling manager perform all

    broadband and narrowband…and connections for all network

    devices." In this scenario, the first manager component

    can be a traffic manager/signaling manager; and the second

    manager component can be a provisioning manager; and the

    software and/or hardware entity is the network devices.).

As per claim 16,

Anderson discloses

- configuring a software and/or hardware entity for partial control by a first

    manager component and partial control by a second manager

    component([0018], for example, line 12-15, "…a traffic

    manager, a provisioning manager and a signaling manager

    perform all broadband and narrowband…and connections for

    all network devices." In this scenario, the first manager

    component can be a traffic manager/signaling manager; and

    the second manager component can be a provisioning manager;

and the software and/or hardware entity is the network

devices.).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

- allowing the software and/or hardware entity to accept one or more first

    management operations from the first manager component and one or more

    second management operations from the second manger component, wherein

    the first and second manager components cooperate to initialize, monitor, and

    detect failures of the software and/or hardware entity ([0018], for

    example, line 12-15, "...a traffic manager, a provisioning

    manager and a signaling manager perform all broadband and

    narrowband...and connections for all network devices.",

    [0021], "...monitoring..."; [0058], "...provisioning..."; The

    examiner asserts that monitoring detect failures.)

As per claim 18,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the second manager component comprises high availability services

    software operating in a high availability domain, the method further comprising

    the steps of: operating the software and/or hardware entity outside of the high

availability domain; and connecting the software and/or hardware entity with the

high availability services software within the high availability domain (`[0068],`

`line 2, "…high availability…")`.

As per claim 19,

the rejection of claim 16 is incorporated;

further Anderson disclose

- sending one or more notifications between the first manager component and the

  second manager component to indicate occurrence of one or more events

  associated with the software and/or hardware entity (`[0018], [0019]`).

As per claim 20,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first

  software and/or hardware components, wherein the step of configuring the

  software and/or hardware entity for partial control by the first manager

  component and partial control by the second manager component

  comprises the steps of: connecting the one or more first software and/or

  hardware components with the first manager component to employ one or

  more first management operations of the first manager component; and

  connecting the one or more second software and/or hardware

  components with the second manager component to employ one or more

second management operations of the second manager component and
to prevent autonomous control of the software and/or hardware entity by
the first manager component ((([0018], for example, line 12-15,
"...a traffic manager, a provisioning manager and a signaling
manager perform all broadband and narrowband...and
connections for all network devices.";[0068], line 2,
"...high availability...").

As per claim 21,

Anderson discloses

- one or more computer-readable signal-bearing media; and means in the one or
  more media for configuring a software and/or hardware entity for partial control
  by a first manager component and partial control by a second manager
  component ([0018], for example, line 12-15, "...a traffic
  manager, a provisioning manager and a signaling manager
  perform all broadband and narrowband...and connections for
  all network devices." In this scenario, the first manager
  component can be a traffic manager/signaling manager; and
  the second manager component can be a provisioning manager;
  and the software and/or hardware entity is the network
  devices.).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

It is noted that any citation [[s]] to specific, pages, columns, lines, or figures in the prior art references and any interpretation of the references should not be considered to be limiting in any way. A reference is relevant for all it contains and may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. [[See, MPEP 2123]]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman
Primary Examiner
1·29·2007